

STATE OF MAINE
DIRIGO HEALTH AGENCY

RE: DETERMINATION OF)	MAINE ASSOCIATION OF HEALTH
AGGREGATE MEASURABLE COST)	PLANS: APPLICATION TO INTERVENE,
SAVINGS FOR THE SECOND)	OBJECTION TO PROPOSED PROCEDURAL
ASSESSMENT YEAR (2007))	ORDER NO. 1 AND REQUEST FOR PRE-
)	HEARING CONFERENCE
)	

I. APPLICATION TO INTERVENE

NOW COMES Applicant, Maine Association of Health Plans ("MEAHP" or the "Association"), on behalf of its member companies, through counsel, pursuant to the Public Notice of Pending Proceeding and Hearing issued by the Board of Directors of the Dirigo Health Agency ("Board") on January 27, 2006 and 5 M.R.S.A. §§9054(1) and (2), and requests that the Board grant the Association intervenor status as a full party in this proceeding, pursuant to 5 M.R.S.A. § 9054(1), or in the alternative, as a full party pursuant to 5 M.R.S.A. § 9054(2), based upon the following:

1. MEAHP members are or may be substantially and directly affected by this proceeding, and;
2. MEAHP members have a significant interest in this proceeding.

Statement of Facts

1. Maine Association of Health Plans is an incorporated association of health plans with a principal place of business located in Cumberland, Maine.
2. MEAHP was founded in 1997 to advocate for its member health plans before the Maine Legislature and regulatory agencies.
3. The members of the Association are entities licensed by the Maine Bureau of Insurance and include health insurers, health maintenance organizations, and third-party administrators, including Aetna, Inc., Anthem Blue Cross Blue Shield of Maine, CIGNA HealthCare of Maine, Inc., and Harvard Pilgrim Health Care, Inc. and its affiliates Health Plans, Inc. and HPHC Insurance Company, Inc.

4. Each MEAHP member is substantially and directly affected by the outcome of this proceeding and each has an interest in this proceeding for the following reasons:

A. Each member of the Association pursuant to 24-A MRSA §6913(2) and (3) and § 6915, is required to pay to the Dirigo Health Fund a savings offset payment determined by the Dirigo Health Agency Board of Directors.

B. The Board is required by 24-A MRSA §6913(1)(A) to hold an adjudicatory hearing to determine, for the second assessment year, "aggregate measurable cost savings ("AMCS") in this State as a result of the operation of Dirigo Health, including any reduction or avoidance of bad debt and charity care costs to health care providers resulting from the operation of Dirigo Health and any increased MaineCare enrollment due to an expansion in MaineCare eligibility occurring after June 30, 2004."

C. The Association was granted intervenor status by the Superintendent of Insurance in the adjudicatory hearing he conducted on October 24 and 27, 2005, to review the Board's recommended determination of AMCS for the first assessment year.

D. Determination by the Dirigo Health Board of AMCS and approval of that determination by the Superintendent are prerequisites to the imposition of the statutory assessment in the form of savings offset payments that member companies of MEAHP will be required to make.

E. Imposition of the assessment of the savings offset payment on paid claims of customers of the member companies of MEAHP will necessitate an increase in prices charged by the members of MEAHP to customers and potential customers, and may result in loss of business due to such an increase.

WHEREFORE, MEAHP requests, pursuant to 5 M.R.S.A. §9054(1), intervenor status as a full party in the above-captioned proceeding and seeks without limitation the following specific rights provided to other parties to this proceeding:

1. to be represented by counsel;
2. to participate in pre-hearing conferences;
3. to issue and receive informational (discovery) requests and copies of filings and notices;
4. to stipulate facts;
5. to present evidence and oral and written arguments on legal and factual issues;
6. to prefile testimony and exhibits;
7. to cross examine witnesses;

8. to file motions, briefs, and other pleadings; and

9. to participate in settlement negotiations.

II. OBJECTION TO PROPOSED PROCEDURAL ORDER NO. 1

MEAHP objects to the proposed procedural order because in two fundamental ways it would deprive MEAHP and other intervenors of a fair hearing and basic due process:

(1) the identification of witnesses, experts and documents would be required before the intervenors had been provided with the DHA staff's proposed methodology and supporting data, and pre-filed testimony would be required only two days after the methodology and data were filed; and

(2) intervenors would be required to file a detailed description of the methodology and supporting data at the same time as the DHA staff filed its methodology and data.

Section 6913(1)(A) of the Act clearly states that, following an adjudicatory hearing, "the Board shall determine AMCS annually not later than April 1." To conduct a meaningful adjudicatory hearing, the DHA staff should first file with the Board its proposed methodology and supporting data. The intervenors should have a reasonable period of time to review this filing prior to filing witness lists, documents and summaries of testimony. Otherwise there is no reasonable basis to determine what witnesses and documents may be required to rebut the DHA staff's proposal.

Moreover, intervenors should not be required to file, as set forth in the proposed order at page 3, a "detailed description of the methodology for determining AMCS, including the components to be included,...the party intends to present; and credible, reliable and accurate data that supports the amount of AMCS derived from the methodology." The DHA staff is the moving party in this proceeding and the determination of AMCS is central to the operations of the DHA. Therefore the DHA staff should first identify a proposed methodology and supporting data in a filing with the Board. Once DHA staff makes this filing, intervenors should be permitted a reasonable period of time to review the DHA proposal and to identify witnesses and documents to rebut the DHA proposal. Intervenors should be permitted but not required to present an alternative methodology and data.

MEAHP has reviewed the Maine State Chamber of Commerce ("Chamber") Application to Intervene and Objection to Provisions in the Notice and Draft Procedural Order, and agrees with the legal authority and argument presented by the Chamber with regard to: (1) striking the requirement that all intervenors as a condition of participation in this hearing file an alternative methodology and supporting data; and (2) the objection that the DHA staff should file its proposed methodology and supporting data first, giving intervenors a reasonable period of time to review this information prior to deciding whether to file its own methodology and supporting data.

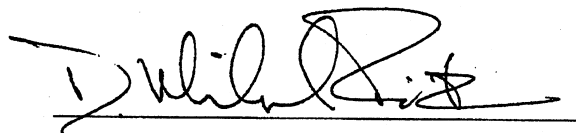
MEAHP also concurs with the Chamber that: (1) there should be a period for discovery as outlined in the schedule contained in the Chamber's Proposed Order; (2) there should be no Rule 26(b)(4) expert witness designation; this information would be included with all other witnesses on the witness list and summaries of testimony; (3) deadlines for exchange of witness list and testimony summaries, pre-filed testimony and exhibits and pre-hearing briefs would be extended by one week each; (4) the hearing would commence on March 22, 2006; and (5) the DHA staff's determination of AMCS with methodology and supporting data should be filed by February 15, 2006, with the intervenors having until February 28, 2006 to file an alternative methodology with supporting data, if any.

III. REQUEST FOR PRE-HEARING CONFERENCE

MEAHP requests that the Board or hearing officer, as appropriate, conduct a pre-hearing conference to review the above-referenced objection with the parties, so that the proposed schedule and roles of the DHA staff and other parties can be clarified. In addition, other questions need to be clarified, including whether a hearing officer will be appointed and whether there will be separate legal counsel for the DHA Board and the DHA staff. In light of the anticipated lack of agreement between the intervenors and the DHA as to the schedule and responsibilities of the intervenors, as outlined above, it is critical to hold a pre-hearing conference to discuss more fully these issues and the underlying considerations.

Dated at Portland, Maine, this 9th day of February, 2006.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2006, by 3:00 p.m., I served via hand delivery a copy of the above filing on:

Board of Directors
Dirigo Health Agency
211 Water Street
Augusta, Maine 04333

A handwritten signature in black ink, appearing to read "D. Michael Frink", written over a horizontal line.

D. Michael Frink, Esq.
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